> to another and the Court of Claims Act's six-year limitation, in suits *against* the government for the foreign portion of the same cause of action." (Memorandum in Opposition, p. 6).

Respondent further states (in footnote 5) that:

> "Under petitioner's theory suits *by* the government for overcharges with reference to the foreign portion of a single through shipment apparently would not be subject to any statute of limitations whatever. In suits between private parties, it is unclear what limitations period would apply to the foreign part of a through shipment." (Memorandum in Opposition, p. 6).

Prior to the 1958 amendments, there was no statute of limitations whatever applicable to actions at law by the Government against carriers. The two-year limitations period referred to by respondent appears in Part I of the Interstate Commerce Act (Section 16(3)(b), 49 U.S.C. §16(3)(b)), and relates solely to complaints filed with the Interstate Commerce Commission, *not to actions at law*. This provision was not changed by the 1958 amendments (it is still two years), and there is no comparable provision at all in Part II of the Interstate Commerce Act (the Motor Carrier Act). See *T.I.M.E., Inc. v. United States*, 359 U. S. 464, 79 S. Ct. 904 (1959).[2] Under Part II of the Act there was, prior to 1958, a two-year statute of limitations, applicable to both shippers and carriers, for actions at law for the recovery of transportation charges subject to the Interstate Commerce

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[2] This was, in fact, recognized by respondent in the Court below. (See page 11 of "Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment.")

Act, but this limitations provision was held not to apply to the Government. See *United States v. Yale Transport Corporation*, 184 F. Supp. 42 (1960).

Thus, the situation prior to 1958 with respect to actions at law, by or against motor carriers, for the recovery of transportation charges subject to the Interstate Commerce Act was as follows: there was a two-year statute of limitations applicable both to carriers and private shippers. The Government, however, was not bound by any limitations provision with respect to suits by it *against* motor carriers, but motor carriers suing the Government in the Court of Claims were bound by the six-year statute of limitations which is there generally applicable. The 1958 amendments to the Motor Carrier Act effected two principal changes, *viz.*, (1) extending the limitations period from two to three years, and (2) making this limitations period applicable to the Government in like manner as it applies to private shippers. These amendments did not, however, have any bearing whatever on transportation performed outside the United States.

As to claims for freight charges for transportation performed outside of the United States (which is here involved), neither before, nor after 1958, were suits relating to such transportation affected by any provisions (including the limitation of actions provisions) set forth in the Interstate Commerce Act. A suit between a carrier and a private shipper relating to foreign transportation was and is governed by the statute of limitations applicable in the jurisdiction where the suit is brought; and as to the Government, suits by the Government against carriers relating to such transportation are still not subject to any limitations period, but suits by a motor carrier against the

Government are subject to the same six-year period of limitations which is applicable in the Court of Claims. If, therefore, there is any "inequity" with respect to suits relating to foreign transportation, *it is an inequity to the carrier*. But until Congress sees fit to legislate a statute of limitations provision applicable to foreign transportation, the Government is not bound by any limitations provision whatever with respect to such claims, and the carriers are limited only *by the six-year period which is applicable in the Court of Claims*. The limitations provisions contained in the Interstate Commerce Act cannot be used to judicially legislate a statute of limitations, as respondent would have, and as was done by the Court below.[3]

CONCLUSION

We respectfully submit that respondent's Memorandum in Opposition pointedly demonstrates the confusion which exists in this area of the law, and serves to underscore the need for review by this tribunal of the decision below.

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[3] Respondent would apparently go even further than did the Court below, and would apply the limitations provisions of the Interstate Commerce Act even to shipments both originating in, and destined to a foreign country.

WHEREFORE, petitioner again respectfully prays that its Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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